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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WAYNE S. HANDLEY et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LESLIE CONTROLS, INC.,

Real Party in Interest.

B213626

(Los Angeles County
Super. Ct. No. BC388972)

ORIGINAL PROCEEDINGS in mandate. William Fahey, Judge. Petition granted.

Waters & Kraus, Paul C. Cook and Michael B. Gurien for Petitioners.

No appearance for Respondent.

Gordon & Rees, Michael Pietrykowski, Don Willenburg and Gary A. Collis for
Real Party in Interest.

On January 29, 2009, we notified the parties and the trial court we were considering issuance of a peremptory writ of mandate in the first instance and on an expedited basis. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) We further notified the parties and the trial court the only issue being considered by this court is whether the trial court abused its discretion in failing to consider opposition documents filed by petitioner Wayne S. Handley.¹

Having reviewed the record and the briefing received in response to the notice we were considering issuance of a peremptory writ in the first instance, we conclude the trial court's order granting summary adjudication without consideration of issues raised in the opposition to the motion for summary adjudication is an abuse of discretion.

The granting of summary adjudication on three of the causes of action is a draconian penalty for a minor violation of court rules,² resulting in a potentially unjust result. The document at issue consists of 23 pages which include: (1) page 1, the title page; (2) page 2 which contains a portion of an introductory statement consisting of six lines and counsel's signature, (3) page 22, a summary of the arguments, and (4) page 23 which consists of a two-line conclusion and counsel's signature. If sanctions are warranted for such a minor departure from a court rule, there are numerous lesser sanctions that would be more in keeping with the circumstances than the granting of summary adjudication that deprives the petitioner of three of the causes of action in the litigation.

The summary adjudication involves the "sophisticated user" of asbestos products contention. The transcript of the hearing indicates the trial court denied summary adjudication of a substantially identical argument by other parties. When questioned by

¹ Petitioner suffers from malignant pleural mesothelioma, a terminal disease, and is gravely ill.

² Rule 3.1113(d) of the California Rules of Court limits the responding memorandum to 20 pages and gives the court discretion to decline to consider documents exceeding the 20-page limit.

counsel for petitioner, the court replied “The argument was probably found in the portion of your brief that was stricken.”

In fact, the issue was discussed on pages 14 through 20 of the opposition to the motion for summary adjudication and carries-over only 10 lines to the pages in excess of the 20-page limit. This indicates a possible misunderstanding of the length of the opposition brief and results in an apparent inconsistent ruling and unequal treatment before the court. If, as stated by counsel for petitioner, the trial court granted the summary adjudication motion based solely or in part on a minor violation of a court rule involving length of briefs, the result is a subversion of the policy favoring resolution of lawsuits on the merits.

Having reviewed the petition, the exhibits provided, and the opposition and reply briefs following our notice we were considering issuance of a peremptory writ of mandate in the first instance, we conclude petitioner’s “ “entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue” [Citation.]’ ” (*Lewis v. Superior Court, supra*, 19 Cal.4th at p. 1241.) Accordingly, the petition is granted.

DISPOSITON

Let a peremptory writ of mandate issue directing the respondent court to:

(1) vacate its order insofar as that order granted the motion for summary adjudication as to petitioner Handley; (2) reconsider the motion for summary adjudication including the portion of the brief filed by counsel for Handley which sets forth the “sophisticated user” of asbestos products contention; and (3) enter an order on the merits of the “sophisticated user” argument as applied to petitioner Handley.

In view of the exigent circumstances of this case and the precarious nature of petitioners’ health, we conclude immediate finality of this decision is necessary to prevent frustration of the relief granted and to promote the interests of justice. Accordingly, the decision is final as to this court when filed. (Cal. Rules of Court, rule 8.264(b)(3).)

The stay issued by this court on January 29, 2009 is lifted.

No costs are awarded in this proceeding.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.